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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 24.04.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Habeas Corpus Petition No.59 of 2006

B. Sankar @ Sivasankar ... Petitioner

vs.

1. The Government of Tamil Nadu
rep. by the Secretary
to the Government of Tamil Nadu
Prohibition and Excise Dept.,
Fort St. George,
Madras-600 009.

2. The Commissioner of Police
Greater Chennai
Egmore, Chennai 600 008. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to direct the respondents to produce the detenue namely Saravanan, S/o. Balasundaram, before this Court, who is detained as per the order of preventive detention passed by the second respondent in BDFGISV No.549 of 2005 dated 13.12.2005 and confined at Central Prison, Chennai, and set him at liberty; and further direction to call for the records relating to the above said order and quash the same.

For Petitioner : Mr.A. Shiv Kumar

For Respondents : Mr.Abudu Kumar Rajarathinam,
Govt. Advocate (Crl. Side)

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner herein challenges the impugned detention order of his brother Saravanan, dated 13.12.2005, detaining him as 'Goonda' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Heard learned counsel for the petitioner as well as learned Government Advocate for the respondents.

3. At the foremost, learned counsel for the petitioner submitted that the impugned detention order is liable to be quashed on the ground of non-application of mind on the part of the Detaining Authority. Elaborating the above submission, learned counsel for the petitioner has brought to our notice that in para 4 of the grounds of detention though the Detaining Authority has referred the pendency of bail applications, viz., Crl.M.P.Nos.10400 of 2005 and 10511 of 2005 before the Principal Sessions Court, Chennai, however, having find that both the bail applications are pending has stated that the detenu is likely to come out on bail by filing bail application before the Sessions Court or High Court forgetting that he has already filed bail applications and the same are pending before Principal Sessions Court, Chennai. The above aspect shows the non-application of mind on the part of the Detaining Authority. On this ground, the impugned order of detention is liable to be quashed. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is quashed. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary
   Government of Tamil Nadu
   Prohibition and Excise Dept.,
   Fort St. George,
   Madras-600 009.
2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 600 008.
3. The Superintendent,
   Central Prison, Chennai.
   (In duplicate for
   communication to the detenue)
4. The Joint Secretary to
   Government, Public
   (Law and Order)
   Fort St. George, Chennai-9.
5. The Public Prosecutor,
   High Court, Madras.

1 cc to Mr.A.Shivkumar, Advocate, SR.20735

ng (co)

dv/28.4.06

HCP. No.59 of 2006

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